

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

June 2026

June Updates

[Calling Someone an Intern Doesn't Make Them Unpaid.](#)

[Your Employees Logged Off. Their Overtime Clock Did Not.](#)

[Final Pay Obligations: Common Traps Employers Can't Afford to Ignore](#)

[Eliminate Background Check Risks: A Primer](#)

Workplace Pulse: Your Quarterly Litigation News and Need-to-Know FAQs

Managing an organization while ensuring compliance with evolving employment law obligations is an ongoing challenge. That is where our Workplace Pulse, quarterly update proves valuable. We keep a pulse on emerging legal developments at the state, local, and federal levels to keep our clients well informed. Through in-depth case law analysis and trend tracking, we offer proactive guidance designed to keep you ahead of the curve so you can focus on what you do best.

Also inside: a roundup of key employment law questions we've been asked this quarter from the thousands of clients who use our **Employment Counsel On-Call Triage Service**, with answers you can use.

Q2 2026 Litigation Roundup: Recent rulings serve as a reminder that employment law continues to evolve—making it essential for employers to regularly review and adapt their practices.

- YouTube star Mr. Beast (Jimmy Donaldson) is defending a sexual harassment case. The complaint appears to be an HR nightmare. Donaldson's mother was head of HR – for a company with hundreds of employees – and the company handbook (known internally as the "Beast Bible") includes sections titled:
 - "It's okay for the boys to be childish"
 - "[D]o everything you can to empower the boys when filming."
 - "No Does Not Mean No" and
 - "The Amount of hours you work is irrelevant."

Plaintiff accuses Donaldson and his cousin of sexually harassing her, of violating her FMLA rights, and of terminating her within weeks of her returning from FMLA and complaining about sexual harassment and a hostile work environment. The internal investigation into these claims was carried out by Donaldson's mother. Mr. Beast employs approximately 500 employees. We will keep you posted!

- The NLRB rules that Red Roof Inn violated federal labor law by firing a worker (Diaz) shortly after she raised concerns about COVID-19 exposure in the workplace. The Board found that raising safety concerns

relating to working conditions during the pandemic was protected activity, and she was fired in retaliation for that protected activity. The complainant was reinstated with backpay largely on the basis of emails showing Red Roof Inn's management attacking Diaz for speaking up. An assistant general manager said in one message that Diaz was "stirring the pot," and managers discussed ways to frame the firing of her as a layoff for lack of business due to COVID or taking advantage of the 90-day review. These emails demonstrated that the basis for the termination was pretextual, and the real reason was her protected activity.

- Another example of retaliation surviving the original adverse action: An IL federal judge refused to hand Amazon a full victory in a former warehouse associate's suit alleging she was unlawfully fired for taking pregnancy leave, finding her claim of retaliation under the PWFA should go to a jury. The employee alleged that, at the time of her termination, an HR rep told a different Amazon employee that the employee lost her job because the company believed she would only remain for the maternity benefits and then leave employment after. Despite the judge finding Amazon didn't fail to accommodate the employee because the employee failed to return medical documentation supporting the leave, the judge said there is still a claim of PWFA retaliation due to the stated motivation for the termination.
- The 5th Circuit holds that full time in-person attendance is an essential function of most jobs, the experience of remote work in COVID notwithstanding. The Court cited a 2003 case for the proposition that full time telework is "rarely a reasonable accommodation." The employee had worked fully remotely for a year before a return to office order. His employer's client, the U.S. Army, determined that allowing full time remote work was not in its best interest, so the request was denied. The employer offered 2-3 days of remote work per week, which the employee rejected. The employer determined that because the employee claimed to need to work remotely full time, he was not a qualified person and could be terminated without discrimination because he could not perform his essential job functions.

Hot Topics from Q2 2026:

- **Q: What rights do we have as the employer if an employee is not cooperating in the interactive process? Can we provide a deadline to provide the ADA request form back and if they don't provide it by the deadline, start to review our attendance policy?**

A: Yes, you can set timelines in the interactive process. The employee has an obligation to engage in the interactive process as well. While the law doesn't set a specific timeframe, you can, if the employee isn't cooperating, set a timeframe for the paperwork to be provided. If they do not provide it, they will be expected to work their normal schedule and duties. I would make sure you have all the communication documented in writing (usually via email) so that when the employee applies for unemployment, you can prove the reason. It wouldn't be

automatic termination if she doesn't turn in the paperwork; it would be unexcused absences for her time off and disciplinary action for performance in not fulfilling her job responsibilities.

- **Q: Our office often sends employees home early without pay when we are not busy to save on cost. Are employees able to refuse to be sent home if they want to work their full shift? I want to make sure it is not illegal to require an employee to go home?**

A: Unless the employee has a contract or is covered by a Collective Bargaining Agreement, you may set rules about when, where and how the employee completes their work. If you need to send staff home because of lack of work, you may do so. The caveat, as always, is the decision as to who to send home cannot be made on a discriminatory, retaliatory, or otherwise illegal basis, as it would be an adverse employment event to reduce an employee's hours. I recommend sticking to voluntary send-home wherever possible, and, if that is not possible, using a transparent, fair system for determining who will be sent home early. Additionally, if the employee being sent home early is paid on a salary basis, they would still need to be paid a full weekly salary to keep their exempt status.

- **Q: We have an individual on intermittent FMLA and DCFMLA. Her hours are unpredictable - it is beginning to become difficult to manage the team's needs. Are we allowed to ask this employee to commit to a particular intermittent leave schedule each week?**

A: Both the FMLA and DC FMLA permit an employee to take intermittent leave when it is medically necessary to care for a family member's serious health condition. If the leave is for the serious health condition of the employee's child, the employee may not know their intermittent FMLA/DC FMLA leave schedule in advance and you cannot penalize the employee from deviations from any sort of schedule the employee provides. In many cases, the need for intermittent FMLA arises unexpectedly. For example, it is not uncommon for someone with a serious health condition to have an unplanned flareup, resulting in their inability to provide advance notice of the need for leave.

In unforeseeable leave scenarios, the employee can only be required to provide you with notice of the need for leave as soon as it is practical for them to do so. For example, you cannot penalize an employee for failing to notify you by 8am on the date of an unforeseeable absence. Doing so would be seen as FMLA retaliation or interference. Note that if you notice the employee's FMLA use is inconsistent with the duration or frequency of what was indicated by the doctor, you can ask for recertification. I suggest reminding the employee of the expectation to provide notice as soon as practical for non-foreseeable leave scenarios. Unfortunately you are limited in your recourse if the employee fails to notify you within your preferred time frame for unforeseeable absences. You can certainly ask them to notify you the night before or by 8am on the date of the need for unforeseeable leave, but you cannot discipline them if they fail to do so and the absence is unforeseeable.

Do You Have Questions?

We can help! Our **Employment Counsel On-Call Triage Service** is a perfect resource for employers of all sizes looking to receive guidance on employment law and HR-related questions. We work with clients day in, day out to help them navigate complex legal issues and implement best practices. We receive unique questions every day through the **On-Call Service** and are ready to tackle any issue where you need help!

Who We Are:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com).**

Meet Wendy Hansen

Wendy brings a broad range of employment law skills to our team. She is the Practice Leader of the Employment Counsel On-Call Triage Service which services thousands of clients across the country. She has experience in handling a variety of questions and claims in employment law, including: FMLA, ADA, FLSA, criminal background checks, medical marijuana, wrongful termination, and harassment.

Wendy is the firm's Organizational Restructure and Reduction in Force Practice Leader and the FMLA and State-Specific Leave Law subject matter expert. She is also the lead for the firm's Education and Training Practice and has hosted and conducted hundreds of webinars for clients, covering topics and trainings for HR personnel, supervisors and mid-level managers; and standard employees.

For more info, check out her bio [here!](#)



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